IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

CRP.No. 938 of 2001(G)

TLB.317/1973 of TALUK LAND BOARD, CHANGANACHERRY

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REVN. PETITIONER:

CHANDY MATHEW, PANTHANANI PUTHENPURACKAL,
KADAYANIKKADU, KANGAZHA, KOTTAYAM.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.LIJI.J.VADAKEDOM

RESPONDENTS:

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1. TALUK LAND BOARD, CHANGANACHERRY,

2. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT, SECRETARIATE, TRIVANDRUM.

BY GOVERNMENT PLEADER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP NO. 938/2001

ORDER ON CMP 2297/2001 IN CRP NO. 938/2001

DISMISSED.

19/10/2007 SD/- (P.R.RAMAN, JUDGE)

// TRUE COPY //

PA TO JUDGE.

jg

P.R.RAMAN, J.

C.R.P. No. 938 of 2001

Dated, this the 19th day of October, 2007

O R D E R

The declarant in a Land Board ceiling case is the petitioner. He challenges the order passed by the Taluk Land Board, Changanassery in TLB No. 317/73. As per order in a suo motu proceedings under Section 85 of the Kerala Land Reforms Act, as introduced by Act 16/89 with effect from 30/05/1989, the Taluk Land Board after considering the matter originally held that the declarant is not liable to surrender any land as he has not owned or possessed any land excess in the ceiling limit. As per the present order the same was re-considered and directed the petitioner to surrender 54.160 cents of land, as the area found to be in possession in excess of the ceiling limit applicable. An extent of 75 cents of land covered by the sale deed executed in his favour by one Sarojiniamma vide document No. 1944/66 was reckoned as land owned and possessed by the declarant and that is how is redetermined the area and came to the conclusion that he possesses the excess land. Earlier, the very same document was considered. The Taluk Land Board, therefore, accepted the

contention of the petitioner that though a sale deed was executed, actually that was not acted upon and petitioner did not come into possession of the said land. Tax in respect of the land was continued to be paid by the assigner subsequently. To avoid any further confusion, this was re-transferred vide another document in favour of the executant as per document No. 2949/74. Therefore, the question was as to whether actually the first document was acted upon and the petitioner could be held to be legally entitled to hold and possess the land covered by that document. The Land Board applied its mind to that question and held in favour of the petitioner by deciding that this land should be deleted from the account of the declarant-petitioner. It is not a case where there is any absence of any document produced by the party and it is not a case where there is fraud or collusion or there was any suppression of material facts from the Taluk Land Board. That being so, this is not a case covered by the provisions contained in sub Section (9A) of Section 85, and the Land Board has no jurisdiction to reopen the matter in the factual matrix of the case. It is to be noticed in this connection that there is no further material available other than what is already been considered by the Land Board in its original

order. If so, this is nothing but a change of opinion.

2. That apart, going through the original documents produced in the case, I find that the notice of re-opening, contained at page 67 of the correspondence file, is dated 28/10/1993. The despatch seal is dated 30/10/1993. The three years period for the initiation of the provision expired on 30/05/1992. Thus the power under the proviso cannot be invoked thereafter. Even though, in the note file at page 11, the RDO opined that there is a scope for re-opening the case, draft notice was put up and approved only on 28/10/1993. Notice is also contained the same date but despatched on 30/10/1993. Even going by the date in the notice, it is beyond the time prescribed in the Act for the purpose of re-opening the case. Even though it need not be within three years from the actual date of receipt of the notice by the declarant, however, at least, it should have been shown that notice was despatched within a period of three years. But in this case as noticed above the notice itself was despatched only later after expiry of the period of three years. For all the above reasons, the impugned order is set aside.

The C.R.P. is allowed.

(P.R.RAMAN, JUDGE)

jg